

§ 9034.3

§ 9034.3 Non-matchable contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include, for example:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.5 or any group of persons other than those under 11 CFR 9034.2(c)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

(f) Contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for or other otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election;

(j) Contributions of currency of the United States or currency of any foreign country; and

(k) Contributions redesignated for a different election or redesignated for a legal and accounting compliance fund pursuant to 11 CFR 9003.3.

[56 FR 34132, July 5, 1991; 56 FR 35934, July 29, 1991, as amended at 64 FR 32397, June 17, 1999]

11 CFR Ch. I (1–1–08 Edition)

§ 9034.4 Use of contributions and matching payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) *Qualified campaign expenses*—(1) *General*. Except as provided in paragraph (b)(3) of this section, all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters*. Even though incurred prior to the date an individual becomes a candidate, payments made in accordance with the 11 CFR 100.131(a) for the purpose of determining whether an individual should become a candidate shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b).

(3) *Winding down costs and continuing to campaign*. (i) Winding down costs subject to the restrictions in 11 CFR 9034.11 shall be considered qualified campaign expenses.

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under 11 CFR 9034.11. Each contribution that is dated after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. Payments from the matching payment account

Federal Election Commission

§ 9034.4

that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR 9033.8.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(5) *Monetary bonuses paid after the date of ineligibility and gifts.* Monetary bonuses paid after the date of ineligibility and gifts shall be considered qualified campaign expenses, provided that:

(i) All monetary bonuses paid after the date of ineligibility for committee employees and consultants in recognition of campaign-related activities or services:

(A) Are provided for pursuant to a written contract made prior to the date of ineligibility; and

(B) Are paid no later than thirty days after the date of ineligibility; and

(ii) Gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services do not exceed \$150 total per individual and the total of all gifts does not exceed \$20,000.

(6) *Expenses incurred by ineligible candidates attending national nominating conventions.* Expenses incurred by an ineligible candidate to attend, participate in, or conduct activities at a national nominating convention may be treated as qualified campaign expenses, but such convention-related expenses shall not exceed a total of \$50,000.

(b) *Non-qualified campaign expenses—*

(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *General election and post-ineligibility expenditures.* Except for winding down costs pursuant to paragraph (a)(3) of this section and certain convention expenses described in paragraph (a)(6) of this section, any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses. In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(6) *Payments to other authorized committees.* Payments, including transfers and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(7) *Allocable expenses.* Payments for expenses subject to state allocation under 11 CFR 106.2 are not qualified campaign expenses if the records retained are not sufficient to permit allocation to any state, such as the failure to keep records of the date on which the expense is incurred.

(8) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious

efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

(c) [Reserved]

(d) *Transfers to other campaigns*—(1) *Other Federal offices.* If a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(5) and 110.8(d). A candidate will be considered to be simultaneously seeking nomination or election to another Federal office if he or she is seeking nomination or election to such Federal office under 11 CFR 110.3(c)(5).

(2) *General election.* If a candidate has received matching funds, all transfers from the candidate's primary election account to a legal and accounting compliance fund established for the general election must be made in accordance with 11 CFR 9003.3(a)(1).

(e) *Attribution of expenditures between the primary and the general election spending limits.* The following rules apply to candidates who receive public funding in either the primary or the general election, or both.

(1) *General rule.* Any expenditure for goods or services that are used for the primary election campaign, other than those listed in paragraphs (e)(2) through (e)(7) of this section, shall be attributed to the limits set forth at 11 CFR 9035.1. Any expenditure for goods or services that are used for the general election campaign, other than those listed in paragraphs (e)(2) through (e)(7) of this section, shall be attributed to the limits set forth at 11 CFR 110.8(a)(2), as adjusted under 11 CFR 110.17(a).

(2) *Polling expenses.* Polling expenses shall be attributed according to when the results of the poll are received. If the results are received on or before the date of the candidate's nomination, the expenses shall be considered primary election expenses. If results are received from a single poll both before and after the date of the candidate's

nomination, the costs shall be allocated between the primary and the general election limits based on the percentage of results received during each period.

(3) *State or national campaign offices.* Prior to the date of the last primary election in a Presidential election year, overhead and salary costs incurred in connection with state or national campaign offices shall be attributed to the primary election. With regard to overhead and salary costs incurred on or after June 1 of the Presidential election year, but before or on the date of nomination, the committee may attribute to the general election an amount not to exceed 15% of the limitation on primary-election expenditures set forth at 11 CFR 110.8(a)(1). Overhead and payroll costs associated with winding down the campaign and compliance activities shall be governed by paragraph (a)(3) of this section.

(4) *Campaign materials.* Expenditures for campaign materials, including bumper stickers, campaign brochures, buttons, pens and similar items, that are purchased by the primary election campaign committee and later transferred to and used by the general election committee shall be attributed to the general election limits. Materials transferred to but not used by the general election committee shall be attributed to the primary election limits.

(5) *Media production costs.* For media communications that are broadcast or published both before and after the date of the candidate's nomination, 50% of the media production costs shall be attributed to the primary election limits, and 50% to the general election limits. Distribution costs, including such costs as air time and advertising space in newspapers, shall be paid for 100% by the primary or general election campaign depending on when the communication is broadcast or distributed.

(6) *Campaign communications.* (i) *Solicitations and fundraising costs.* The costs of fundraising, including that of events and solicitation costs, shall be attributed to the primary election or to the GELAC, depending on the purposes of the fundraising. If a candidate raises funds for both the primary election and for the GELAC in a single

communication or through a single fundraising event, the allocation of fundraising costs and the distribution of net proceeds will be made in the same manner as described in 11 CFR 9034.8(c)(8)(i) and (ii).

(ii) *Other communications.* Except as provided in paragraph (e)(5) of this section, the costs of a campaign communication that does not include a solicitation shall be attributed to the primary or general election limits based on the date on which the communication is broadcast, published or mailed. The cost of a communication that is broadcast, published or mailed before the date of the candidate's nomination shall be attributed to the primary election limits.

(7) *Travel costs.* Expenditures for campaign-related transportation, food, and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense. Travel to and from the convention shall be attributed to the primary election. Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if the travel occurs before the candidate's nomination.

[56 FR 35934, July 29, 1991, as amended at 60 FR 31881, June 16, 1995; 60 FR 57537, 57538, Nov. 16, 1995; 64 FR 49364, Sept. 13, 1999; 64 FR 61781, Nov. 15, 1999; 67 FR 78683, Dec. 26, 2002; 68 FR 47418, Aug. 8, 2003]

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. The candidate's net outstanding campaign obligations under this section equal the difference between paragraphs (a)(1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching; currency; balances on deposit in banks; savings and loan institutions; and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) *Liabilities.* (1) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5.

(2) The amount submitted as estimated necessary winding down costs under paragraph (a)(1) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity.

(c) (1) *Capital assets.* For purposes of this section, the term *capital assets* means any property used in the operation of the campaign whose purchase price exceeded \$2000 when received by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but